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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/406,666 09/27/99 PALINKAS

R D-6371

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PM82/0813

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EXAMINER

RAYMOND D THOMPSON  
UNIROYAL CHEMICAL COMPANY INC  
WORLD HEADQUARTERS  
MIDDLEBURY CT 06749

PETRAVICK, M

ART UNIT

PAPER NUMBER

3671

DATE MAILED:

08/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/406,666

Applicant(s)

PALINKAS, RICHARD L.

Examiner

Meredith C Petravick

Art Unit

3671

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 2-6, 8-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 5 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kilby, 3,667,797.

Kilby discloses the claimed pad (10) including:

- a resilient polymeric web (middle portion of 10)
- a pair of parallel end sections on opposite ends of the web (end portions of 10 including holes 50)
- a bore (50) extending longitudinally through each end section
- a pair of apertures (40,41) parallel and adjacent to the bores

The bore could receive a mounting member therefore they are adapted to receive a mounting member.

In regards to claim 2, the bores are parallel to each other. (Fig. 3)

In regards to claim 5, the apertures are positioned adjacent the end sections. (Fig. 3)

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby in view of Favor, 3,771,301.

Kilby discloses the claimed device and suggests that pads should be made of resilient material. (Column 1, line 44 - 47) However, Kilby does not disclose the exact type of material.

Like the Kilby, Favor discloses a pad for the jaws of a tree shaker. The pad is made of polyurethane, which is an elastomer material. (Column 8, lines 65-67)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pad of the Kilby from polyurethane as in Favor, as one type of resilient material used in a pad.

1. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Korthuis 5,666,796.

Kilby discloses the claimed device and suggests that pads should be made of resilient material. (Column 1, line 44 - 47) However, Kilby does not disclose the exact material.

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Like Kilby, Korthuis discloses a machine for harvesting fruit including a tree-engaging portion. Korthuis provides a resilient polyethylene pad around the beaters of the machine.

(Column 2, lines 44-46) This pad protects the beaters.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pad of Kilby from polyethylene as in Korthuis, as one type of known resilient material used as a pad for engaging trees.

### ***Response to Arguments***

2. Applicant's arguments filed 7/9/01 have been fully considered but they are not persuasive.

Applicant canceled claims 1 and 7 and added claims 8-9. Claims 2-6 now depend from claim 8. However, new claims 8-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Kilby.

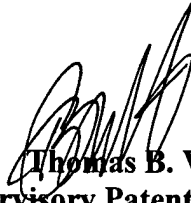
### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047. The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-305-3597.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

MCP  
August 8, 2001